

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9032 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?
NO

MOHANSINH HIMATSINH MAHIDA

Versus

STATE OF GUJARAT

Appearance:

MR MI HAVA for Petitioner
MR.PS PARMAR ADDL GOVERNMENT PLEADER
for Respondent Nos. 1 & 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 28/10/96

ORAL JUDGEMENT

The Joint Secretary, Revenue Department, Gandhinagar, exercising powers under Sec.34 of the Urban Land Ceiling Act (for short 'the Act ') on 28th June 1993 reviewed the order dt. 30/11/1987 passed by the competent authority and declared that in all 5662 sq.mts. of land was in excess of the ceiling limit. The

petitioner has by this petition called in question the said orders in question challenging its legality and propriety.

2. In short the case of the petitioner is that when the Act came into force, he was holding properties as follows :-

Sr. Village Survey Area Use/Zone

No. No. Sq.Mt.

1. Amreli 6 334 Residential
2. -do- Nondh No.70 563 -do- Kotharco
3. -do- 77-78 123 -do-
4. -do- 79 91 -do
5. -do- 80 117 Agricultural
6. -do- S.No.17 6677 -do-
7. Chhapra 7487 - -do-
Bhatta
8. -do- S.No.42/ 3137 Agri. Zone.

2-3-4

9. -do- S.No.49/2 5665 Agri. Zone.

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He filled the form under Sec.6(1) of the Act declaring the properties he was having as stated above. The competent authority, out of all the total areas of the properties to the tune of 23,182 sq.mts., deducted 18,096.98 sq.mts. In Chhapra Bhatha village, there were three agricultural lands shown at Sr.Nos.7,8 and 9 hereinabove and those agricultural lands being used as such and situated in agricultural Zone were also excluded for computation. Accordingly the competent authority found that in all the petitioner was having 5085.02 sq.mts. of land to be taken into account. The petitioner was entitled to three Units as the land was held by joint family and there were 3 adult members in the family.. Each Unit was entitled to retain 1500 sq.mts. of land. He, therefore, deducted 4500 sq.mts. there from and reached the conclusion that the petitioner was holding 585.02 sq.mts. of land in excess.. The Government then under Sec. 34 of the Act took up the matter under review. The Secretary who was reviewing the order found that the competent authority was not right in excluding 334 sq.mts. of land covered by the house shown at Sr.No.1, 91 sq.mts. of land covered by the construction of the house shown at Sr.No.4 and 60 sq. mts. out of 117 sq.mts. of land covered by the house shown at Sr.No.5. The land Survey No.17 shown at Sr.No.6

was at that time shown as agricultural land for which exemption was sought for. That was granted, but later on that exemption was withdrawn. The total area of that land at that time was 6677 sq.mts. of land and that total area has been considered while computing ceiling the limit by the Secretary, Revenue Department, though the competent authority considered the area of that land to be of 565 sq.mts. because of the erosion soil and acquisition of land for the purpose of road construction. Computing accordingly, the Secretary, Revenue Department fixed the total holdings of the petitioner at 7162 sq.mts. for the purpose of ceiling limit. Therefrom, according to him, the petitioner was entitled to 1500 sq.mts. of land retainable by one Unit because, he was of the view that every adult member in the family was not separately entitled to unit benefit, but they all were collectively as one unit entitled to the benefit. He, therefore, reached the conclusion that in all 5662 sq.mts. of land was in excess of the ceiling limit. Accordingly he passed the order which is under challenge in this petition.

3. It was not disputed before me that agricultural land used as such and falling within the agricultural Zone are required to be excluded while computing the ceiling limit. Accordingly the lands shown at S.Nos. 7,8 and 9 hereinabove are required to be excluded. As per decision in the case of Meera Gupta vs. State of West Bengal and others AIR 1992 SC 1567, the area of the land covered by the construction of the building prior to 17th February 1976 has to be excluded. Admittedly the house and cattle shades shown at Sr.Nos. 1 to 5 were constructed on the land prior to the Act came into force i.e. 17th February 1976. The area covered by the construction has to be excluded in toto. Over and above such exclusion, land appurtenant to the construction and additional appurtenant land are also required to be excluded from computation as construction thereon is not permitted. In view of such law, the computation now centers on the property at bearing No.S.17 shown at S.No.6, hereinabove.

4. By passage of time, there was gradual erosion of soil. The Government wanted to construct the road. Hence certain lands were acquired under Land Acquisition Act. Eventually, therefore, the total area of land bearing Survey No.17 came to be reduced to 5665 sq.mts., and that too before the Act came into force. For the purpose of computation, the said area has to be made the base and not the total area viz. 6677 sq.mts. of land. After the land was acquired, the road has been constructed and the same passes through the said land.

Owing to the road, certain lands on both the sides thereof are not permitted to be used for the purpose of construction. Hence such lands are required to be excluded under the head Road Margin and Side Margin. The Surveyor of Land Records Office, producing map before the competent authority pointed out that the road margin land was admeasuring 250.70 sq.mts. and side margin land was admeasuring 864.28 sq.mts. Thus total of both the side lands comes to 1114.98 sq.mts. The same has to be excluded, out of the total area of 5665 sq.mts. of land On doing so, the land admeasuring 4550.02 sq.mts. remains on hand.

5. The land formerly belonged to Himatsinh Gumansinh and after his death, it was jointly held by his heirs namely Mohansinh Himatsinh, Maniben Himatsing and Laduben Himatsinh. There were thus three members in the family holding the properties jointly. If the persons are jointly holding the property, each one adult member is to be considered as separate Unit independently entitled to retain 1500 sq.mts. of land and not as single unit being the members of the joint family. I am fortified by a decision rendered in the case of Chhaganlal Trikamdas Thakker & Ors Vs.Competent Authority, Rajkot and Ors. 1994(1) GCD 1. If that land of three Units is deducted, only 50.02 sq.mts. of land remains on hand which can be said to be the surplus land, but each of the three Units is entitled to 10% of 1500 sq.mts. of land retainable as margin land. If that is considered, no land remains on hand which can be said to be in excess of the ceiling limit. Instead of computing in the above stated manner, the competent authority and thereafter the Secretary, Revenue Department, fell into error and misdirected themselves, as a result, the erroneous computation came into being.

5. Faced with such situated, when a query was made, Mr. Sompura, learned AGP, could not point out how computation made by both the authorities below was in consonance with law. He in his usual acondour conceded that in fact no land was in excess of the ceiling limit.

6. It has been submitted on behalf of the petitioner that the land in question i.e. Survey No.17 has been developed and it is divided into several plots. The plots are sold to the persons of middle income group. Those persons have already constructed their dwelling units wherein they reside since 1993 or prior to it. In view of the matter, no useful purpose would be served, if the matter is remanded for a fresh computation and even if it is remanded, the computation would not be otherwise

than what is hereinabove computed.

7. For the foregoing reasons, the petition is allowed. The order passed by the competent authority on 30th November, 1987, the copy of which is produced at Annexure A and the order dt. 20th June, 1993 passed by the Joint Secretary (Revenue), the copy of which is produced at Annexure : B are hereby quashed and set aside, and it is hereby declared that the petitioner does not hold any portion of land in excess of the ceiling limit under the Act. No costs in the circumstances of the case. Rule is made absolute accordingly.
